

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

ORDER

Adopted: May 9, 2013**Released: May 9, 2013**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the request of South Park Telephone Company, Inc. (South Park) for expedited waiver to correct the study area boundary for South Park's study area 462195 that was used in the regression analysis that established "benchmarks" for high-cost loop support (HCLS).¹

II. BACKGROUND

2. In the *HCLS Benchmarks Implementation Order*,² the Wireline Competition Bureau (Bureau) adopted the methodology for establishing limits on reimbursable capital costs and operating expenses (capex and opex, respectively) to implement the benchmarking rule that the Commission adopted in the *USF/ICC Transformation Order*.³ The HCLS benchmarking methodology uses quantile regression analyses to generate a capex limit and an opex limit for each rate-of-return cost company study area. The geographic independent variables used in the regressions were rolled up to the study area using Tele Atlas wire center boundaries, which is a widely-used, commercially available, comprehensive source for this information.⁴ The *HCLS Benchmarks Implementation Order* recognized that there were concerns regarding inaccuracies in these data.⁵ In response, the Bureau created a streamlined, expedited waiver process for carriers affected by the benchmarks to correct any errors in their study area boundaries by providing accurate information in a manner and format that Bureau staff can readily evaluate and process to determine whether there are special circumstances supporting a waiver.⁶ To help potential petitioners

¹ See Letter from Stacy Brigham, Agent for South Park, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Nov. 13, 2012) (*South Park Waiver Request*).

² *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd 4235 (Wireline Comp. Bur. 2012) (*HCLS Benchmarks Implementation Order*).

³ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17741-47, paras. 210-26 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

⁴ TomTom Telecommunications Suite 2011.09 (formerly Tele Atlas North America), Wire Center Premium, for wire center boundary and central office location information.

⁵ *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4246, para. 27.

⁶ See *id.* at 4246-47, paras. 27, 29. Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict

(continued...)

file information efficiently, accurately, and in a manner that will permit the Bureau to evaluate and process the information expeditiously, the Bureau set forth a template for filing study area maps.⁷

III. DISCUSSION

3. In support of its request to correct the study area boundary, on November 13, 2012, South Park provided the Bureau with wire center boundaries⁸ consistent with the data specifications for submitting boundary information set forth in Appendix C of the *HCLS Benchmarks Implementation Order*.⁹ The information submitted included a certification by an officer of the company under penalty of perjury that the information provided accurately portrays South Park's study area.¹⁰

4. Pursuant to section 1.3 of the Commission's rules, we find that good cause has been shown and special circumstances warrant waiver of the Commission's rules to revise the capex and opex benchmarks for South Park's study area that were listed in Appendix B of the *HCLS Benchmarks Implementation Order*¹¹ and in the 2013 benchmarks Public Notice.¹² Using the corrected boundary information, the Bureau staff modified the relevant variables and calculated revised capex and opex benchmarks for South Park. We direct the National Exchange Carrier Association (NECA) to use the revised benchmarks in Table 1 in place of the original benchmarks for calculating HCLS for South Park for the period from July 1, 2012 through December 31, 2012, and the benchmarks in Table 2 for the period from January 1, 2013 through March 31, 2013. For the period beginning April 1, 2013, the Commission concluded that "it is appropriate to combine or 'sum' the existing caps as an interim measure."¹³ Therefore, for the period from April 1, 2013 through December 31, 2013, we direct NECA to use the revised summed benchmarks in Table 3. Using the revised boundary information, South Park's capex and opex benchmarks increased for the first two periods and its summed benchmark increased for the third period. Because South Park remains limited by the benchmarks during all three periods, it is not eligible for redistributed HCLS for any of the periods. We also instruct the Universal Service Administrative Company to make any necessary support amount adjustments consistent with the corrected information.

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compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁷ *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4301-02, App. C.

⁸ *South Park Waiver Request*, CD-ROM Exhibit, file name "SouthParkTelephoneCompany_462195.shp."

⁹ *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4301-02, App. C.

¹⁰ *South Park Waiver Request*, CD-ROM Exhibit, file name "ReadMe_462195.txt."

¹¹ 47 C.F.R. § 1.3; *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4299, App. B.

¹² *Wireline Competition Bureau Releases New High-Cost Loop Support Benchmarks for 2013*, WC Docket Nos. 10-90, 05-337, Public Notice, 28 FCC Rcd 3256 (Wireline Comp. Bur. 2013) (*Mar. 26, 2013 Public Notice*).

¹³ *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Sixth Order on Reconsideration and Memorandum Opinion and Order, 28 FCC Rcd 2572, 2583, para. 29 (2013).

Table 1 -- July 1, 2012 through December 31, 2012

South Park	90% Capex CPL Estimate	Capex CPL¹⁴	90% Opex CPL Estimate	Opex CPL¹⁵	Capped?
Original	1,197.34	2,087.41	2,159.77	4,028.89	Yes
Revised	1,219.71	2,087.41	2,218.27	4,028.89	Yes

Table 2 – January 1, 2013 through March 31, 2013

South Park	90% Capex CPL Estimate	Capex CPL¹⁶	90% Opex CPL Estimate	Opex CPL¹⁷	Capped?
Original	1,133.53	1,654.27	2,139.48	4,245.02	Yes
Revised	1,154.71	1,654.27	2,197.42	4,245.02	Yes

Table 3 – April 1, 2013 through December 31, 2013

South Park	90% Capex CPL Estimate	90% Opex CPL Estimate	Summed 90% CPL Estimate	Total Cost per Loop¹⁸	Capped?
Original	1,133.53	2,139.48	3,273.01	5,899.29	Yes
Revised	1,154.71	2,197.42	3,352.13	5,899.29	Yes

¹⁴ The capex and opex cost per loop (CPL) amounts are the same as those published in Appendix B of the *HCLS Benchmarks Implementation Order*, which were based on the annual cost data NECA filed in 2011. NECA filed a schedule of HCLS for all carriers for the six-month period of July 1, 2012 through December 31, 2012, which reflects voluntary quarterly updates carriers filed pursuant to section 36.612 of the Commission's rules. See 47 C.F.R. § 36.612; *Wireline Competition Bureau Announces Access to High-Cost Loop Support Data Submitted by NECA*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 7135 (Wireline Comp. Bur. 2012).

¹⁵ See *supra* note 14.

¹⁶ The capex and opex CPL amounts are the same as those published by the Commission on March 26, 2013. See *Mar. 26, 2013 Public Notice*.

¹⁷ See *supra* note 16.

¹⁸ See *supra* note 16.

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 254, and 303(r) of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 254, 303(r), 1302, sections 0.91, 0.201(d), 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, 1.3, and the delegations of authority in paragraphs 210, 217, 226 and 1404 of the *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), that the petition for expedited waiver to correct its boundary data filed by South Park Telephone Company, Inc. IS GRANTED to the extent described herein.

6. IT IS FURTHER ORDERED, pursuant to the authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau